Bennett v. Gannett Co., Inc. et al Doc. 32

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JEREMY BENNETT,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
vs.)	
)	NO. 1:08-cv-2666-TCB
GANNETT CO., INC.,)	
MULTIMEDIA, INC.,)	
MULTIMEDIA HOLDINGS)	
CORPORATION and GANNETT)	
RIVER STATES PUBLISHING)	
CORPORATION,)	
)	
Defendants.)	

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW, JEREMY BENNETT, (hereinafter "Plaintiff") in the above-captioned matter, and files this First Amended Complaint and respectfully shows the Court as follows:

Parties, Jurisdiction and Venue

1.

Plaintiff is a resident of Lowndes County, Georgia.

PLAINTIFF'S EXHIBIT A

PENGAD-Bayonne, N. J.

Dockets.Justia.com

2.

Multimedia, Inc. is a corporation organized and existing under the laws of the State of South Carolina.

3.

Multimedia, Inc. may be served by service of process upon its attorneys of record in this case, James C. Rawls of McKenna Long & Aldridge, LLP, and George D. Gabel, Jr. of Holland & Knight, LLP, who have agreed to accept and acknowledge service on its behalf.

4.

Multimedia, Inc. is subject to the jurisdiction of the Superior Court of Fulton County, and Plaintiff has filed a Motion to remand this case to that Court. However, to the extent that such a motion is denied, Multimedia, Inc. is subject to the jurisdiction and venue of this Court.

5.

Venue is proper in this Court as to Defendant Multimedia, Inc.

6.

Multimedia Holdings Corporation is a corporation organized and existing under the laws of the State of South Carolina.

7.

Multimedia Holdings Corporation may be served by service of process upon its attorneys of record in this case, James C. Rawls of McKenna Long & Aldridge, LLP, and George D. Gabel, Jr. of Holland & Knight, LLP, who have agreed to accept and acknowledge service on its behalf.

8.

Multimedia Holdings Corporation is subject to the jurisdiction of the Superior Court of Fulton County, and Plaintiff has filed a Motion to remand this case to that Court. However, to the extent that such a motion is denied, Multimedia Holdings Corporation is subject to the jurisdiction and venue of this Court.

9.

Venue is proper in this Court as to Defendant Multimedia Holdings Corporation

10.

Gannett River States Publishing Corporation is a corporation organized and existing under the laws of the State of Arkansas.

11.

Gannett River States Publishing Corporation may be served by service of process upon its attorneys of record in this case, James C. Rawls of McKenna Long & Aldridge, LLP, and George D. Gabel, Jr. of Holland & Knight, LLP, who have agreed to accept and acknowledge service on its behalf.

12.

Gannett River States Publishing Corporation is subject to the jurisdiction of the Superior Court of Fulton County, and Plaintiff has filed a Motion to remand this case to that Court. However, to the extent that such a motion is denied, Gannett River States Publishing Coroporation is subject to the jurisdiction and venue of this Court.

13.

Venue is proper in this Court as to Defendant Gannett River States Publishing Corporation.

14.

Defendant Gannett Co., Inc. is a Delaware Corporation.

15.

Gannett Co., Inc. may be served with process by serving its registered agent CT Corporation System at 1201 Peachtree St. NE, Atlanta, GA 30361.

16.

Gannett Co., Inc. is subject to the jurisdiction of the Superior Court of Fulton County, and Plaintiff has filed a Motion to remand this case to that Court. However, to the extent that such a motion is denied, Gannett Co., Inc. is subject to the jurisdiction and venue of this Court.

17.

Venue is proper in this Court as to Defendant Gannett Co., Inc.

18.

Defendants Multimedia, Inc., Multimedia Holdings Corporation, and Gannett River States Publishing Corporation are subject to personal jurisdiction in the federal and state courts in Georgia pursuant to O.C.G.A. §9-10-91, the Georgia Long-Arm Statute. Furthermore, Defendants have regularly engaged in business in the State of Georgia for profit; have derived substantial revenues from their business in the State of Georgia; have subjected themselves to the laws of the State of Georgia; and have committed torts in the State of Georgia resulting in injuries to Plaintiff in the State of Georgia.

19.

While Plaintiff denies that Official Code of Georgia § 9-11-11.1 applies to this action, Plaintiff has complied with the requirements of said code section by filing an Amendment to their original Complaint attaching verifications of Jeremy Bennett and William P. Langdale, III.

20.

This is an action for libel, slander, and defamation of character brought pursuant to the provisions of Georgia law, including, but not limited to, Official Code of Georgia §§ 51-5-1, 51-5-2, and 51-5-4.

Facts

21.

On or about September 25, 2007, www.firstcoastnews.com, a website owned and operated by Defendants, published an article entitled "Georgia Elementary Teacher Accused of Raping Students" which stated that "[a] Georgia elementary teacher is accused of raping students" and which identified that teacher as Plaintiff in both the text of the article and in an accompanying photograph.

22.

On or about September 25, 2007, and on other dates in close proximity to September 25, 2007, First Coast News reported on the air that Plaintiff had been accused of raping second grade students.

23.

This story was broadcast and reported on the air on WTLV-TV and WJXX, which are owned and operated by Defendants.

24.

First Coast News is the trade name for two Jacksonville, Florida television stations, WTLV-TV and WJXX.

25.

WTLV-TV is owned and operated by Multimedia Holdings Corporation.

26.

WTLV-TV is owned and operated by Defendants.

27.

WJXX is owned and operated by Gannett River States Publishing Corporation.

28.

WJXX is owned and operated by Defendants.

29.

Plaintiff was not accused of raping anyone as of the date of the publishing of the above reports.

30.

Plaintiff has never been accused of raping anyone.

31.

Plaintiff did not rape anyone.

32.

Plaintiff, by and through counsel, requested Defendants to retract the above article and broadcast information on October 3, 2007.

33.

The above news stories were placed on www.firstcoastnews.com by Defendants and were broadcast and aired publicly on First Coast News (on WTLV-TV and WJXX) by Defendants with knowledge of the falsity of the statements and/or in reckless disregard of whether the statements were true or false. Furthermore, Defendants failed to exercise ordinary, reasonable, and due care in checking and confirming the truth of the statements regarding Plaintiff, which could have easily been done, and making sure that their oral and written publications were truthful.

34.

Defendants actions as described in this Complaint were willful, wanton, and malicious. The broadcasts regarding the rape allegation, as well as the newspaper article published on Defendants' website, were published by Defendants and were heard and viewed by other persons.

COUNT I – LIBEL/NEWSPAPER LIBEL

35.

The allegations contained in paragraphs 1 through 34 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein.

36.

The September 25, 2007 article reported that Plaintiff had been indicted for raping students, however, Plaintiff had not been indicted for the crime of rape.

37.

The rape allegations contained in the September 25, 2007 article are false.

38.

The rape allegations contained in the September 25, 2007 article are inaccurate.

39.

The rape allegations contained in the September 25, 2007 article are misleading.

40.

The rape allegations contained in the September 25, 2007 article are libelous, scandalous, and defamatory.

41.

The rape allegations contained in the September 25, 2007 article were made with knowledge of the statements' falsity and/or in reckless disregard of whether the statements were true or false.

42.

The rape allegations in the September 25, 2007 article imputed to Plaintiff a crime of rape, punishable by law, for which he was not accused of having committed.

43.

The rape allegations in the September 25, 2007 article were made without lawful excuse or privilege.

44.

The rape allegations contained in the September 25, 2007 article injured Plaintiff's reputation and exposed him to public hatred, contempt and ridicule. Furthermore, said allegations and statements tend to injure the reputation of the Plaintiff.

45.

Defendants failed to exercise due care to in checking and confirming the truth of the statement regarding Plaintiff, which could have easily been done, and making sure that its oral and written publications were truthful. Furthermore, Defendants' actions in making these allegations constitute malicious deformation.

46.

The actions of Defendants constitute libel pursuant to the Official Code of Georgia § 51-5-1 and newspaper libel pursuant to Official Code of Georgia §51-5-2.

47.

Defendants' actions, as described herein, have caused Plaintiff damages, including embarrassment, humiliation, mental anguish (pain and suffering), and damage to his reputation.

48.

Plaintiff is entitled to actual, compensatory, and general damages as a result of the libelous actions of Defendants to be determined by the enlightened conscience of the jury.

COUNT II—LIBEL PER SE

49.

The allegations contained in paragraphs 1 through 48 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein.

50.

The online article stated that Plaintiff was being charged with rape and imputed a criminal, dishonest, and debasing act and, thus, constituted libel per se.

51.

The libel and malicious defamation of Plaintiff was done with knowledge of the falsity of statements and/or reckless disregard of whether such statements were true or false. Furthermore, Defendants failed to exercise ordinary, reasonable, and due care in checking and confirming the truth of the statements regarding Plaintiff, which could have easily been done, and making sure that their oral and written publications were truthful.

52.

Defendants' actions, as described herein, have caused Plaintiff damages, including embarrassment, humiliation, mental anguish (pain and suffering), and damage to his reputation.

53.

Plaintiff is entitled to actual, compensatory, and general damages as a result of the libelous actions of Defendants to be determined by the enlightened conscience of the jury.

54.

Because said statements and publications constitute libel per se, damage to Plaintiff is inferred and presumed to have occurred under Georgia law.

COUNT III – SLANDER

55.

The allegations contained in paragraphs 1 through 54 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein.

56.

The rape allegations contained in the September 25, 2007 broadcast imputed to Plaintiff a crime punishable by law.

57.

Defendants failed to exercise ordinary, reasonable, and due care in checking and confirming the truth of the statements regarding Plaintiff, which could have easily been done, and making sure that their oral and written publications were truthful. Furthermore, the publications and utterances were done with knowledge of their falsity and/or in reckless disregard of whether the statements were true or false. Furthermore, the actions of Defendants were malicious, willful, and wanton.

58.

Defendants' statements constitute slander and oral defamation of Plaintiff pursuant to Official Code of Georgia § 51-5-4.

59.

Defendants' actions, as described herein, have caused Plaintiff damages, including embarrassment, humiliation, mental anguish (pain and suffering), and damage to his reputation.

60.

Plaintiff is entitled to actual, compensatory, and general damages as a result of the slanderous conduct of Defendants to be determined by the enlightened conscience of the jury.

COUNT IV—SLANDER PER SE

61.

The allegations contained in paragraphs 1 through 60 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein.

62.

The Defendants' on-air broadcast reported that Plaintiff was accused of raping 2nd grade students.

63.

The plain meaning of the words spoken during the September 25, 2007 broadcast constitute slander per se.

64.

The words used during the September 25, 2007 broadcast were injurious on their face, accused Plaintiff of a horrendous crime and need no extrinsic proof to establish such injury.

65.

The slanderous statements made during the September 25, 2007 broadcast were unambiguous.

66.

Defendants failed to exercise ordinary, reasonable, and due care in checking and confirming the truth of this information, which could have easily been done, and making sure that its oral and written publications were truthful. Furthermore, the publications and utterances were done with knowledge of their falsity and/or in reckless disregard of whether the statements were true or false.

67.

Defendants' actions, as described herein, have caused Plaintiff damages, including embarrassment, humiliation, mental anguish (pain and suffering), and damage to his reputation.

68.

Defendants' statements constitute slander and oral defamation of Plaintiff pursuant to Official Code of Georgia § 51-5-4.

69.

Plaintiff is entitled to actual, compensatory, and general damages as a result of the slanderous conduct of Defendants to be determined by the enlightened conscience of the jury.

70.

Because said statements and publications constitute slander per se, damage to Plaintiff is inferred and presumed to have occurred pursuant to Official Code of Georgia § 51-5-4.

COUNT V – DEFAMATION OF CHARACTER

71.

The allegations contained in paragraphs 1 through 70 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein.

72.

Defendants failed to exercise ordinary, reasonable, and due care in checking and confirming the truth of the statements regarding Plaintiff, which could have easily been done, and making sure that their oral and written publications were truthful. Furthermore, the publications and utterances were done with knowledge of their falsity and/or in reckless disregard of whether the statements were true or false. Furthermore, Defendants' actions were malicious, willful, and wanton.

73.

The September 25, 2007 article and broadcast were both published with a reckless disregard for the truth and have greatly damaged Plaintiff's reputation.

74.

Defendants' actions, as described herein, have caused Plaintiff damages, including embarrassment, humiliation, mental anguish (pain and suffering), and damage to his reputation.

75.

Plaintiff is entitled to actual, compensatory, and general damages as a result of the defamatory conduct of Defendants to be determined by the enlightened conscience of the jury.

COUNT VI – PUNITIVE DAMAGES

76.

The allegations contained in paragraphs 1 through 72 of Plaintiff's Complaint are incorporated herein by reference as if each such allegation was fully set forth herein

77.

Defendants' actions, as set forth above, were made with malice, and/or reckless disregard for the truth, and with specific intent to do harm to, and at the expense of Plaintiff, solely for the sake of creating viewers for their news broadcast and website. Furthermore, Defendants' actions showed willfulness conduct, malice, wantonness, and oppression, and that entire want of care which would raise the presumption of conscious indifference to consequences.

78.

The actions of Defendants, as described herein, were accompanied by aggravating circumstances.

79.

Punitive damages should be awarded against the Defendants to punish, penalize, and deter Defendants.

80.

Plaintiff is entitled to an award of punitive damages in an amount to be determined at trial by the enlightened conscience of the jury.

WHEREFORE, Plaintiff respectfully prays that the following relief be granted:

(1) That a jury trial be had on all issues so triable;

(2) That Plaintiff be awarded actual damages against Defendants in an amount to be proven at trial;

(3) That Plaintiff be awarded general damages against Defendants in an amount to be determined by the enlightened conscience of the jury;

(4) That Plaintiff be awarded punitive damages against Defendants in an amount to be determined by the enlightened conscience of the jury;

(5) That Plaintiff recover the costs of filing this action; and

(6) That Plaintiff have such other and further relief as this Court deems just and proper.

This the 18th day of September, 2008.

LANGDALE VALLOTTON, LLP

WILLIAM P. LANGDALE, III
(signed by Lance D. Lourie with express permission)
Georgia Bar No. 435910

CHRISTINA L. FOLSOM
(signed by Lance D. Lourie with express permission)
Georgia Bar No. 267260

1007 North Patterson Street
Valdosta, Georgia 31603-1547
(229) 244-5400

WATKINS, LOURIE, ROLL & CHANCE, PC

LANCE D. LOURIE
Georgia Bar No. 458520

Tower Place 200, Suite 1050
3348 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 760-7400

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing pleading upon opposing counsel mailing a copy of same in a properly addressed and stamped envelope:

James C. Rawls
MCKENNA LONG & ALDRIDGE, LLP
303 Peachtree Street, N.E.
Suite 5300
Atlanta, GA 30308

George Gabel
Alan M. Weiss
HOLLAND & KNIGHT, LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202

This 18th day of September, 2008.

WATKINS, LOURIE, ROLL & CHANCE, PC

LANCE D. LOURIE
Georgia Bar No. 458520

Tower Place 200, Suite 1050
3348 Peachtree Road, NE
Atlanta, GA 30326
(404) 760-7400
ATTORNEYS FOR PLAINTIFF